

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 18 May 2022

Public Authority: HM Revenue and Customs
Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant has requested disclosure of redacted information contained in an email of 15 January 2019.
2. The Commissioner's decision is that HM Revenue and Customs (HMRC) is entitled to rely on section 44(1)(a) FOIA – prohibition on disclosure, to refuse the request.
3. The Commissioner does not require HMRC to take any steps as a result of this decision notice.

Request and response

4. On 21 July 2021, the complainant wrote to HMRC and requested information in the following terms:

"Ms Mary Aiston sent an e-mail dated 15 January 2019, timed at 09.05. Its subject was "TSC Questions." A screen shot of that e-mail is shown below.

The second substantive paragraph contains the question "If so, what is our plan for those and why won't there be an explosion of new DR schemes?" Immediately after that question, there is a sentence with word(s) and/or number(s) between "hoping" and "will" redacted.

1. Please confirm that this redaction is still appropriate.
2. If so, please identify the statutory basis for such redaction.

3. If the redaction is no longer considered appropriate, please supply the word(s) and/or number(s) previously redacted. Please note that I have previously raised this informally with the Press Office but they have not responded to this request. Hence my formal request.
4. If the answer to 2 is yes but the answer to 3 is no, whether there have been any published decisions in the course of that litigation since 15 January 2019? Any other information you are able to provide that clarifies the nature of the redacted information (for example a description of any words other than the taxpayer's name) would be most appreciated."
5. HMRC responded on 23 July 2021 and refused to provide the requested information citing section 44(1)(a) FOIA as its basis for doing so.
6. Following an internal review HMRC wrote to the complainant on 23 August 2021 maintaining its position.

Scope of the case

7. The complainant contacted the Commissioner on 24 August 2021 to complain about the way their request for information had been handled. They stated:

"The case concerns the interpretation of the FOIA exemptions in sections 18, 19 and 23 of the Commissioners for Revenue & Customs Act 2005. HMRC have disclosed a document which (it is assumed) refers to a published decision of a court or tribunal, but the case name has been redacted on the grounds that publication is prohibited. Accordingly, the document is meaningless as it is not clear which case is being referred to. This cannot reflect the Parliamentary intention when enacting the provisions, which were described in the Supreme Court as "I take section 18(1) to be intended to reflect the ordinary principle of taxpayer confidentiality" (R (on the application of Ingenious Media Holdings plc and another) v Commissioners for Her Majesty's Revenue and Customs [2016] UKSC 54 at [23])."
8. The Commissioner wrote to the complainant and referred to a previous decision notice published¹ on 11 April 2022 and advised that his position was unlikely to deviate from this. However, the complainant advised that they wished to challenge the Commissioner's position at the Information Tribunal and required a decision notice to do so.

¹ [ic-113527-j3t3.pdf \(ico.org.uk\)](https://ico.org.uk/subject-access/subject-access-requests/subject-access-requests-2022/11-april-2022)

9. The Commissioner therefore considers the scope of this case to be to determine if HMRC are entitled to rely on section 44(1)(a) FOIA to withhold the requested information.

Reasons for decision

10. The first part of this decision notice details the parts of FOIA and CRCA that have been relied on to withhold the requested information.

Section 44 – Prohibitions on disclosure

11. Section 44 is an absolute exemption. This means that if information is covered by any of the subsections of section 44 it is exempt from disclosure. It is not subject to a public interest test.
12. Section 44 of the FOIA states that:
- (1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –
 - (a) is prohibited by or under any enactment,
 - (b) is incompatible with any Community obligation, or
 - (c) would constitute or be punishable as a contempt of court

Commissioners for Revenue and Customs Act 2005

13. Section 23 provides:

Freedom of information

(1) Revenue and customs information relating to a person, the disclosure of which is prohibited by section 18(1), is exempt information by virtue of section 44(1)(a) of the Freedom of Information Act 2000 (prohibitions on disclosure) if its disclosure—

(a) would specify the identity of the person to whom the information relates, or

(b) would enable the identity of such a person to be deduced.

(1A) Subsections (2) and (3) of section 18 are to be disregarded in determining for the purposes of subsection (1) of this section whether the disclosure of revenue and customs information relating to a person is prohibited by subsection (1) of that section.

(2) Except as specified in subsection (1), information the disclosure of which is prohibited by section 18(1) is not exempt information for the purposes of section 44(1)(a) of the Freedom of Information Act 2000.

(3) In subsection (1) 'revenue and customs information relating to a person' has the same meaning as in section 19.

14. Section 23(1) refers to section 18:

Confidentiality

(1) Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.

(2) But subsection (1) does not apply to a disclosure—

(a) which—

(i) is made for the purposes of a function of the Revenue and Customs, and

(ii) does not contravene any restriction imposed by the Commissioners,

(b) which is made in accordance with section 20 or 21,

(c) which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,

(d) which is made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,

(e) which is made in pursuance of an order of a court,

(f) which is made to Her Majesty's Inspectors of Constabulary, the Scottish inspectors or the Northern Ireland inspectors for the purpose of an inspection by virtue of section 27,

(g) which is made to the Director General of the Independent Office for Police Conduct, or a person acting on the Director General's behalf, for the purpose of the exercise of a function by virtue of section 28,

(h) which is made with the consent of each person to whom the information relates,

(i) which is made to Revenue Scotland in connection with the collection and management of a devolved tax within the meaning of the Scotland Act 1998,

(j) which is made to the Welsh Revenue Authority in connection with the collection and management of a devolved tax within the meaning of the Government of Wales Act 2006, or

(k) which is made in connection with (or with anything done with a view to) the making or implementation of an agreement referred to in section 64A(1) or (2) of the Scotland Act 1998 (assignment of VAT).

(2A) Information disclosed in reliance on subsection (2)(k) may not be further disclosed without the consent of the Commissioners (which may be general or specific).

(3) Subsection (1) is subject to any other enactment permitting disclosure.

(4) In this section—

...

(c) a reference to a function of the Revenue and Customs is a reference to a function of—

(i) the Commissioners, or

(ii) an officer of Revenue and Customs, ...

15. CRCA sets out a number of functions of the Commissioners and officers of Her Majesty's Revenue and Customs. Section 5(1)(a) will suffice as an example. This provides that 'The Commissioners shall be responsible ... for the collection and management of revenue.'

16. Section 9(1) provides:

Ancillary powers

(1) The Commissioners may do anything which they think-

(a) necessary or expedient in connection with the exercise of their functions, or

(b) incidental or conducive to the exercise of their functions.

And 'function' is defined in section 51(2)(a):

(2) In this Act-

(a) 'function' means any power or duty (including a power or duty that is ancillary to another power or duty), and

(b) a reference to the functions of the Commissioners or of officers of Revenue and Customs is a reference to the functions conferred-

- (i) by or by virtue of this Act, or
 - (ii) by or by virtue of any enactment passed or made after the commencement of this Act.
17. In other words, when CRCA refers to functions, that includes powers relevant to those functions.
18. Section 23(3) adopts the definition of 'revenue and customs information relating to a person' from section 19:

Wrongful disclosure

(1) A person commits an offence if he contravenes section 18(1) or (2A) or 20(9) by disclosing revenue and customs information relating to a person whose identity—

- (a) is specified in the disclosure, or
- (b) can be deduced from it.

(2) In subsection (1) 'revenue and customs information relating to a person' means information about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs (within the meaning given by section 18(4)(c)) in respect of the person; but it does not include information about internal administrative arrangements of Her Majesty's Revenue and Customs (whether relating to Commissioners, officers or others).

Commissioner's analysis

19. Section 18(1) CRCA states: 'Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.'
20. The Commissioner shares the view that the information is held by HMRC in connection with its function of assessing and collecting tax. Therefore the information falls under section 18(1) CRCA and is prohibited from disclosure.
21. The next matter to consider is whether section 23(1) CRCA is also relevant. Section 23(1) specifically designates information as exempt from disclosure under section 44(1)(a) FOIA, if its disclosure would identify the person to whom it relates or would enable the identity of such a person to be deduced. The term "person" includes both natural and legal persons and therefore includes entities such as companies, and charities as well as individuals.
22. In his request for internal review the complainant has argued that:

"The only reasonable inference from the refusal is that the missing text spells out "Rangers". That is more than a reference to a football club but the name of a case that went to the Supreme Court. It is beyond any rational application of section 23 of CRCA to suggest that the name of a published case merits redaction."

23. Section 23 CRCA is expressed in such a way as to be certain that under FOIA, no-one is entitled to information HMRC holds relating to a person. This may on occasion have the effect of catching information that is in the public domain, but that is a proportionate incident to the certainty of taxpayer protection under FOIA that the prohibition seeks to achieve.
24. HMRC further stated neither section 23 nor the definition of revenue and customs information relating to a person requires HMRC to make any allowances for information which may already be in the public domain.
25. Were the redacted term to refer to a Supreme Court case in which HMRC exercised its statutory functions, and the context in which the party's name is placed would reveal some information about the 'person', the requirements of section 23(1) would still be met and as such the exemption at section 44(1)(a) FOIA would be engaged.
26. If the requested information relates to identifiable persons, in the words used in section 19(2) CRCA, it is held in connection with the exercise of a function of the public authority and from that, the persons to whom the information relates are identifiable. The test, it should be noted, is not whether the information sought is taxpayer confidential. It is whether the information would specify the identity of a person to whom it relates or would enable their identity to be deduced.
27. On this basis, HMRC maintained that it is entitled to withhold the requested information by virtue of section 44(1)(a) FOIA.
28. The Commissioner has considered the complainant's arguments that there is no duty of confidentiality as the cases have been through the courts and are a matter of public record.
29. However, he is not persuaded that this a strong enough argument to override the specific sections of the CRCA which clearly state when information is prohibited from disclosure.
30. Therefore the Commissioner finds that HMRC was entitled to withhold the requested information on the basis of section 44(1)(a) FOIA.

Right of appeal

31. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Susan Duffy
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